

## **REMARKS**

### **Claim Amendments**

Claim 35 has been amended to be in independent form.

Independent claims 14, 28, and 36 have been amended and reformatted for better clarity. Dependent claims 38-39, 41 have been added. Support for these claims can be found throughout the specification and drawings, *see, e.g.*, Figs. 1-2 and accompanying text.

Dependent claim 40 has been added and is directed to the "bosses" limitation formerly found in corresponding independent claim 14.

Dependent claim 42 has been added and is directed to the "bar" limitation formerly found in corresponding independent claim 28.

None of these amendments introduce new matter.

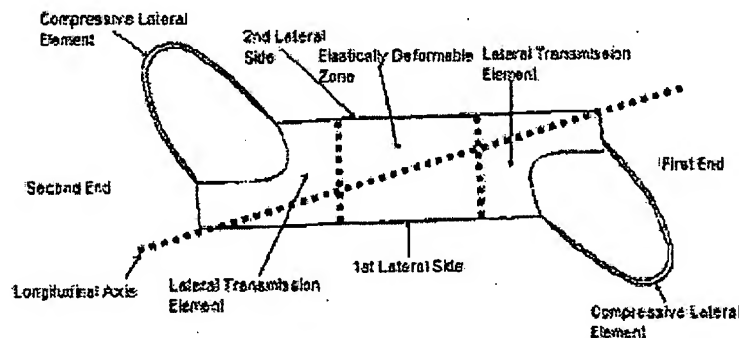
### **Allowable Claim 35**

Applicant notes with appreciation that dependent claim 35 is indicated as allowable. As such, claim 35 has been amended to be in independent form, with the language "a circular strap engageable round" from corresponding independent claim 28 changed to "a strap engageable around" to improve grammar. Based on the Action, Applicant submits that claim 35 is in condition for allowance.

**§ 102 Rejections over Zucherman**

In the Action of 11 June 2008, claims 14-21, 26-28, 33, 36-37 were rejected under §102 as being anticipated by U.S. Patent Publication No. 2001/0016743 (Zucherman).

Independent claim 14 requires, *inter alia*, a wedge that includes "first and second opposing ends" that each include "a recess shaped to receive the respective spinous processes." In addition, claim 14 requires "a longitudinal axis extending through said recesses," and "lateral transmission elements disposed between the compressive lateral elements and the wedge," with "each lateral transmission element disposed entirely on a respective lateral side of said longitudinal axis." In the rejection, the Action includes the following illustrated interpretation of Zucherman on page 4 of the Action:



Applicant first notes that the longitudinal axis in the illustration does not extend through the relevant recesses. Further, whether or not the longitudinal axis is relocated to be positioned as claimed, both of the lateral transmission elements identified in the illustration plainly extend through the longitudinal axis. As such, the lateral transmission elements identified in the illustration are incapable of meeting the limitation "each lateral transmission element disposed entirely on a respective lateral side of said longitudinal

axis." As such, Zucherman cannot anticipate independent claim 14 or its dependent claims.

With further regard to dependent claim 38, this claim requires "wherein displacement of the lateral transmission elements towards each other applies a compressive force to the wedge so as to urge the first and second ends away from each other." Applicant notes that with reference to the illustration above, displacement of the putative lateral transmission elements toward each other in Zucherman necessarily urges the putative first and second ends toward each other, not away from each other as claimed. Thus, dependent claim 38 is not anticipated by Zucherman for this additional reason.

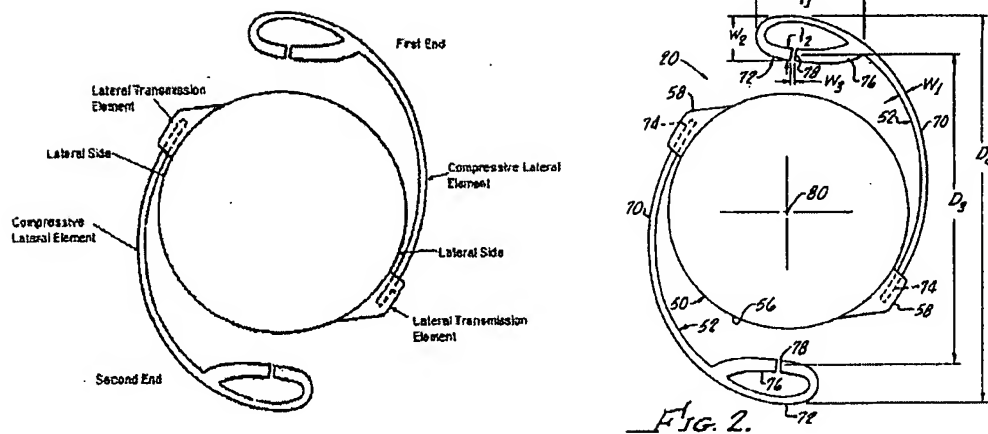
Likewise, independent claim 28 requires, *inter alia*, "the lateral transmission elements ... not extending through a sagittal plane defined by the spinous processes in the space between the spinous processes." This arrangement is shown in Figs. 1-4 where the lateral transmission elements 7 or 30 are disposed laterally spaced from the central sagittal plane of the spinous processes 9, and do not extend through that plane. In contrast, the putative lateral transmission elements of Zucherman illustrated above would plainly extend through the sagittal plane when the Zucherman spacer receives the spinous processes. Accordingly, Applicant submits that independent claim 28, and its dependent claims, are not anticipated by Zucherman.

Independent claim 36 requires, *inter alia*, "first and second longitudinally extending compressive lateral elements disposed adjacent to the lateral sides of the interspinous wedge, but entirely spaced away therefrom." With reference to the illustration above, the parts labeled as the compressive lateral element appear to be touching the lateral sides of the Zucherman "wedge," and are not "entirely spaced away" therefrom as claimed. Accordingly, Applicant submits that independent claim 36, and its dependent claim 37, are not anticipated by Zucherman.

#### **§ 102 Rejections over Portney**

In the Action of 11 June 2008, claims 14-21 and 26-27 were rejected under §102 as being anticipated by U.S. Patent No. 6,152,959 (Portney).

Independent claim 14 requires, *inter alia*, an "interspinous wedge", "two compressive lateral elements", and "two lateral transmission elements disposed between the compressive lateral elements and the wedge." Further, the wedge is required to include "first and second ends," with each of the ends "comprising a recess shaped to receive the respective spinous processes." The June 2008 Action asserts that 1) the "optic 50" of Portney is the claimed wedge; 2) the "fixation elements or haptics 52" of Portney are the claimed compressive lateral elements; and 3) the bosses 58 are the claimed lateral transmission elements. See the illustration from page 6 of the Action and Fig. 2 of Portney, both reproduced below:

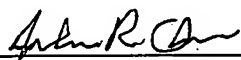


Applicant notes that the optic 50 does not include any ends that have recesses shaped to receive the respective spinous processes. Indeed, the Action does not identify any recesses whatsoever. Therefore, the Portney optic 50 simply does not meet all the claimed limitations on the wedge. As such, Applicant submits that independent claim 14 and its dependent claims define patentable subject matter over Portney.

In view of the above amendments and remarks, the Applicant submits that the present application is in condition for allowance and such action is respectfully requested.

Respectfully submitted,  
COATS & BENNETT, P.L.L.C.

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John R. Owen  
Registration No.: 42,055  
Telephone: (919) 854-1844  
Facsimile: (919) 854-2084